IN THE CIRCUIT COURT OF HANCOCK COUNTY, WEST VIRGINIA

IN RE: E.B., a minor

Civil Action No. 07-C-210

Entered In Civil Misc. Book
No. 26 Page 261
Brenda L. Jackson
Clerk of said Cou

ORDER

Currently pending before the Court is Petitioner, Holly Gress's (hereinafter "Petitioner") Petition for Approval of Infant Settlement, filed pursuant to W.Va. Code § 44-10-14. In her Petition for Approval of Infant Settlement, Petitioner requests that the Court apportion the proposed settlement monies, pursuant to *Arkansas DHS v. Ahlborn, infra.* Also pending are West Virginia Department of Health and Human Resources' and Ohio Department of Job and Family Services' Motions for Summary Judgment regarding the Court's ability to apportion the proposed settlement monies according to *Arkansas DHS v. Ahlborn*, 547 U.S. 268 (2006). After reviewing the written submissions of the parties, the relevant law, and after considering testimony presented during the hearing held on December 21, 2009, the Court is prepared to issue its decisions with respect to the above.

I.
FACTS

This matter is currently before the Court on Plaintiff's Petition for Approval of Infant Settlement. The minor, E.B., was seriously and permanently injured during his birth. His mother, Holly Gress, filed a lawsuit in the United States

District Court for the Southern District of Ohio, Eastern Division, against Coshocton County Memorial Hospital, Janet Burrell, Gabriel Yandam, M.D. and LeFemme Obstetrics and Gynecology, LLC. Currently, Gabriel Yandam, M.D. and LeFemme Obstetrics and Gynecology, LLC wish to settle the minor's claims. This proposed settlement is the subject of the instant Petition for Approval of Minor's Settlement.

Petitioner's Petition seeks Court approval of the instant settlement proposal, as well as the Court's allocation of said settlement funds between Petitioner, the minor, E.B., and West Virginia DHHR and Ohio Department of Job and Family Services.[1] West Virginia Department of Health & Human Resources (hereinafter "West Virginia DHHR") filed a Motion for Summary Judgment contesting Petitioner's claim that settlement could be apportioned by the Court pursuant to *Arkansas Dept. Of Health & Human Services v. Ahlborn, infra.* Ohio Department of Job and Family Services also filed a brief contesting allocation of settlement funds pursuant to *Arkansas Dept. Of Health & Human Services v. Ahlborn, infra.* Ohio has not objected to the jurisdiction of this Court to hear and decide this petition, notwithstanding the fact that the underlying suit is currently pending in the United States District Court for the Southern District of Ohio, Eastern Division.

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[1]West Virginia DHHR has asserted a total lien over this case of $557,104.71; and Ohio Dept. Of Job and Family Services has asserted a total lien over this case of $698,225.24.

A hearing was held in this matter on December 21, 2009. Following said hearing, all parties were asked to submit additional evidence regarding the full value of the minor's claim. Each party submitted additional materials, which were considered by the Court.

II.
ARGUMENTS OF THE PARTIES

A. West Virginia DHHR

West Virginia DHHR has filed a Motion for Summary Judgment on the issue of whether *Arkansas Department of Health and Human Services v. Ahlborn, supra* is controlling on this matter. West Virginia DHHR claims that it is not, and that they are entitled to judgment as a matter of law. Specifically, West Virginia DHHR argues that West Virginia Code §9-5-11 gives West Virginia DHHR a priority right to full reimbursement for its expenses from any settlement and/or judgment against a liable third party from which the Medicaid recipient has recovered. Additionally, West Virginia DHHR claims that *Arkansas Department of Health and Human Services v. Ahlborn* does not control because of the doctrine *lex loci contractus*. Essentially, West Virginia DHHR argues that Petitioner and E.B. are citizens of West Virginia, that they contracted for Medicaid benefits in West Virginia, and they received Medicaid benefits in West Virginia, therefore, West Virginia law should apply to this dispute.

Further, West Virginia DHHR contends that the West Virginia statute is not in conflict with the Medicaid Act or with *Ahlborn* because "both statutory provisions limit West Virginia's recovery language to the actual medical expenses paid by the State on behalf of the Medicaid recipient for which a third party is liable to the extent the Medicaid recipient is reimbursed for them." *See* West Virginia DHHR's brief, pg. 10.[2] West Virginia DHHR also argues that the West Virginia Legislature is the most appropriate entity to determine whether and to what extent West Virginia DHHR is entitled to subrogation against E.B., and that they have determined a reasonable method for determining the State's medical reimbursements, i.e. the Medicaid recipient is free to negotiate a lower settlement with the State, and the State gets to decide on a case-by-case basis whether a lower settlement is warranted.

Moreover, West Virginia DHHR points out that Petitioner has not taken into account the fact that E.B. will continue to be on Medicaid for the rest of his life. West Virginia DHHR implies that they should be given some sort of a set-off against the monies that they will have to expend on behalf of E.B. in the future. Finally, West Virginia DHHR argues that, pursuant to W.Va. Code §55-7B-8,

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[2]Even though West Virginia DHHR makes this argument at pg. 10, West Virginia DHHR also argues throughout its brief that West Virginia DHHR is entitled to full reimbursement of its expenditures on behalf of E.B. regardless of what amount is received by E.B. and for what purpose said monies are received by E.B. as compensation. As a result, West Virginia DHHR appears to be making two contradictory arguments in its papers.

E.B.'s damages are capped.[3]

B. Petitioner

Petitioner responded to West Virginia DHHR's Motion for Summary Judgment by arguing unequivocally that *Arkansas Department of Health & Human Services v. Ahlborn, supra*, applies to the instant matter. In accordance with *Ahlborn*, Petitioner argues that the full value of this case should be established at $25,373,937.95, which includes $19,118,608 for future medical costs,[4] $1,255,329.95 in lien monies asserted by the State of West Virginia and the State of Ohio,[5] and $5,000,000.00 in non-economic damages.[6] Petitioner points out that the actual settlement is $3,600,000.00. As a result, Petitioner argues, the

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[3]West Virginia DHHR claims that E.B. is limited to $250,000 in non-economic damages pursuant to W.Va. Code §55-7B-8(b). However, the case would have been tried in United States District Court for the Southern District of Ohio, Eastern Division (based on diversity jurisdiction); and, therefore, Ohio State law applies to E.B.'s damages. Ohio has a damages cap statute: Ohio Revised Code § 2315.18(B)(3). According to Ohio Revised Code § 2315.18(B)(3):

> (3) There shall not be any limitation on the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action to recover damages for injury or loss to person or property if the noneconomic losses of the plaintiff are for either of the following:
>
> > (a) Permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system;
> >
> > (b) Permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities.

[4]This figure represents Dr. Yarkony's lowest projected figure, and assumes that E.B. will live only until he is 50 years of age.

[5]As noted previously, West Virginia's total Medicaid lien is $557,104.71 and Ohio's total Medicaid lien is $698,225.24.

[6]According to Petitioner, the Guardian Ad Litem testified that E.B.'s injuries warranted between $5,000,000.00 and $10,000,000.00 in non-economic damages.

ratio of settlement to total value of the case is as follows: $3,600,000.00/$25,373,937.95 = 0.1419 or 14.19%. 14.19% of each State's claim is $79,053.16 for West Virginia and $99,078.16 for Ohio. Therefore, Petitioner requests that this Court apportion $79,053.16 to West Virginia and $99,078.16 to Ohio as reimbursement for the monies each State has expended on behalf of E.B.

Petitioner contends that, because this case would have been tried in the United States District Court for the Southern District of Ohio, Eastern Division, Ohio State Law would have applied to the case, specifically Ohio's damages cap statute, codified at Ohio Revised Code § 2315.18(B)(3), which does not provide a cap to non-economic damages in a case such as this one.

C. Ohio Attorney General

Initially, the Court notes that Ohio has not raised an objection to this Court's ability to hear and make decisions regarding any issues with Ohio's Department of Job and Family Services's outstanding lien.

The Ohio Attorney General avers that the instant case is distinguishable from *Arkansas Department of Health & Human Services v. Ahlborn, supra*, because in *Ahlborn*, the parties stipulated to the full value of the case in order to facilitate resolution of the same. Here, there is no such stipulation. The Ohio Attorney General also argues that Petitioner fails to take into account the fact that Medicaid will incur additional costs of E.B.'s medical care in the future.

Further, the Ohio Attorney General claims that the numbers used by Dr. Yarkony to evaluate the future costs of E.B.'s medical care are incorrect insofar as they are not the figures on which Medicaid relies to pay out Medicaid claims. That is, Dr. Yarkony's figures are not the Medicaid rate, as the Ohio Attorney General would have the Court rely upon. Using the Medicaid rate as the Ohio Attorney General believes the rate to be, the full value of E.B.'s future medical costs would be $4,875,013.59, which would result in Medicaid reimbursement to Ohio of $515,639.34. Arguing further, the Ohio Attorney General says that if one third of the nursing care in Dr. Yarkony's report was paid at the billed rate rather than the Medicaid rate, the total value of E.B.'s future medical costs would only be $8,631,272.40, which would translate into a reimbursement to Ohio Medicaid of $291,229.75. Even if one were to raise the amount of the full value of E.B.'s future medical costs to $10,000,000.00, Ohio Medicaid would be reimbursed for $251,361.09. After considering the above, the Court notes that the Ohio Attorney General has failed to present any expert evidence to this effect. Moreover, the Ohio Attorney General has failed to cite any case law which stands for the proposition that the Medicaid rate should be used when calculating an injured party's future medical costs.[7] Indeed, Dr. Yarkony's expert testimony regarding the value of E.B.'s future medical costs is not contested.

[7]See footnote 8.

III.
RELEVANT LAW

A. Infant Settlement

Petitioner's Petition for Approval of Infant Settlement was filed pursuant to W.Va. Code § 44-10-14, which provides in relevant part:

> *Order approving or rejecting settlement* - The court shall enter an order with findings of fact and granting or rejecting the proposed settlement, release and distribution of settlement proceeds.

B. Choice of Law Regarding Non-Economic Damages

Initially, the Court notes that there is a choice of law question with regard to its determination of non-economic damages. The underlying action was filed in the United States District Court for the Southern District of Ohio, Eastern Division. As a result, Ohio state law applies to the calculation of E.B.'s damages.

According to Ohio law, there is a cap for non-economic damages in a professional liability case; however, this cap is not applicable in cases where the injured party has sustained injuries which constitute "permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system" or "[p]ermanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities." *See* Ohio Revised Code § 2315.18(B)(3). After reviewing the facts of this case in detail, the Court is satisfied that, given the nature and extent of E.B.'s injuries, Ohio's damages cap would not apply to the instant matter.

C. *Arkansas Dept. Of Health & Human Services v. Ahlborn*, 547 U.S. 268 (2006)

In *Ahlborn, supra*, Plaintiff was injured on January 2, 1996 as a result of a motor vehicle accident which occurred in Arkansas. She was nineteen (19) years old at the time of the motor vehicle accident. She suffered severe and permanent injuries as a result of the motor vehicle accident that left her brain damaged and unable to complete her college education. Plaintiff's liquid assets were insufficient to cover her medical costs, so, after evaluating her application, the Arkansas Department of Health & Human Services (hereinafter "ADHS") determined that she was eligible for medical assistance. Eventually, the ADHS paid $215,645.30 on behalf of Plaintiff for medical care. *See Ahlborn, supra* at p. 272-73.

On April 11, 1997, Plaintiff filed a personal injury lawsuit against two alleged tortfeasors. As part of her suit, Plaintiff claimed past and future medical expenses, permanent physical injury, past and future pain, suffering, mental anguish, past loss of earnings and working time, permanent impairment of ability to earn in the future. *See Ahlborn, supra* at 273. ADHS intervened in the case in February 1998 to assert a lien on the proceeds of any third-party recovery Plaintiff might obtain. Eventually, the case was settled out of court for $550,000. The parties did not allocate the settlement between categories of damages. ADHS asserted a lien against the settlement proceeds in the amount of $215,645.30, or the total amount paid out by ADHS for Plaintiff's medical care. *See Ahlborn, supra* at 274.

On September 30, 2002, Plaintiff filed an action in the United States District Court for the Eastern District of Arkansas seeking declaration that the lien asserted by ADHS violated federal Medicaid laws insofar as full satisfaction of the same would require depletion of compensation for injuries other than past medical expenses. Importantly, in order to facilitate the District Court's resolution of the legal questions presented, the parties stipulated that Plaintiff's entire claim was reasonably valued at $3,040,708.12; that the settlement amounted to approximately one-sixth of that sum; and that if Plaintiff's construction of federal law was correct, ADHS would be entitled to only the portion of the settlement that constituted reimbursement for medical payments made, or $35,581.47 (approximately one-sixth of the total amount paid out by ADHS). *See Ahlborn, supra* at 274.

After considering cross-motions for summary judgment, the United States District Court for the Eastern District of Arkansas held that, under Arkansas law, Ahlborn had assigned to ADHS her right to any recovery from the third-party tortfeasors to the full extent of Medicaid's payments for her benefit. Accordingly, ADHS was entitled to a lien in the amount of $215,645.30. The Eighth Circuit reversed, holding that the ADHS was entitled only to that portion of the judgment that represented payments for medical care. In the opinion at *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006), the United States Supreme Court affirmed the Eighth Circuit.

By way of background, Arkansas, pursuant to its reading of federal Medicaid laws, passed a statute which required a Medicaid applicant to "automatically assign his or her right to any settlement, judgment or award which may be obtained against any third party to [ADHS] to the full extent of any amount which may be paid by Medicaid for the benefit of the applicant." *Id.* at 277 (quoting Ark.Code Ann. § 20-77-307(a)). As a result, "when medical assistance benefits are provided to the recipient, because of injury, disease or disability for which another person is liable," ADHS "shall have a right to recover from the person the cost of benefits so provided." *Id.* (quoting Ark.Code Ann. 20-77-301(a)) (internal quotations omitted).

In essence, the Arkansas statute claims an entitlement to any settlement or judgment for personal injuries regardless of whether any portion of that settlement or judgment represents compensation for damages other than for past medical expenses, i.e. lost wages, physical pain and suffering...etc. Indeed, the statute claimed a right to recover any and all monies expended on behalf of an applicant. However, Ms. Ahlborn argued that the Arkansas statute went too far - and the United States Supreme Court agreed. *See Ahlborn, supra.*

In its opinion, the United States Supreme Court noted that the federal third-party liability provisions of the Federal Medicaid statute focused on recovery of payments for medical care, rather than the amount paid out by State Medicaid programs. That is, Federal third-party liability provisions require an assignment

of no more than the right to recover that portion of a settlement or judgment that represents payments for medical care. Said provisions do not mandate the enactment of the Arkansas scheme to recover the full amount of monies expended regardless of whether that portion of the judgment or settlement is meant to compensate for something other than past medical expenses, i.e. lost wages or physical pain and suffering. *See* 42 U.S.C. § 1396k(a)(1)(A). The United States Supreme Court held that, therefore, Arkansas' reimbursement statutes overreached, and that States are only permitted to recover those monies from any settlement or judgment which are meant to compensate for past medical services. *See Ahlborn, supra.*

In opposing plaintiff's Motion for Summary Judgment, the State argued, among other things, that if Medicaid could only recover that portion of the settlement that represented reimbursement for past medical costs, parties to litigation would engage in settlement manipulation such that the State's interest would be negotiated away. Importantly, while discussing ADHS's argument that reimbursement of the full Medicaid lien is needed to avoid the risk of settlement manipulation, the Supreme Court suggested that such a risk can be avoided by the State's advance agreement to an allocation, or, if necessary, by submitting the matter to a court for decision. *See Ahlborn, supra,* at 288. (Emphasis added.)

After thoroughly reviewing the above-case, the Court is satisfied that the holding of same is clear: Federal Medicaid law does not authorize the States,

under their Medicaid scheme, to assert a lien on a plaintiff's settlement monies in an amount exceeding the amount of the settlement which represents compensation for past medical expenses. In fact, such a lien is specifically prohibited by the Federal Anti-Lien provision of the Federal Medicaid Law. *See Ahlborn, supra.* at 292.

The West Virginia Supreme Court of Appeals has not addressed this case in any opinion since this opinion was issued in 2006. The West Virginia legislature amended West Virginia Code §9-5-11 in 2009 to include language not relevant for the instant purposes. However, importantly, said amendments did not alter or change any language contained therein regarding the priority right of DHHR to recover monies paid out on behalf of a medical benefits recipient, from monies paid from liable third-parties. Notwithstanding the legislature's 2009 amendments, and despite WV DHHR's position that W.Va. Code § 9-5-11 takes priority over *Ahlborn*, and for the reasons that follow, the Court believes that *Ahlborn* controls in this instance.

IV.
DISCUSSION

A. Arguments of Parties

W.Va. Code § 9-5-11 seems to give a priority right to WV DHHR for full reimbursement of any monies it expended on behalf of a recipient without regard to whether the monies received by the recipient, either by settlement or judgment,

were meant to compensate the recipient for past medical costs, or some other loss, such as lost wages, pain and suffering...etc. Indeed, WV DHHR relies upon this very language in making its arguments to the Court. However, it goes without saying that any decision from the United States Supreme Court takes precedence over any existing case or statutory law which is contradictory to the Supreme Court's holding. Accordingly, the United States Supreme Court's decision in *Arkansas Department of Health & Human Resources v. Ahlborn* takes precedence over W.Va. Code § 9-5-11, and any other existing case law regarding this issue. This is particularly so because *Ahlborn* interprets the Federal Medicaid laws on which W.Va. Code §9-5-11 is based. As such, West Virginia's contention that W.Va. Code § 9-5-11 gives West Virginia DHHR a priority right to full reimbursement of its lien despite what the United States Supreme Court in *Ahlborn* said is without merit. Moreover, if West Virginia's argument that W.Va. Code § 9-5-11 does not conflict with existing federal law is correct, then, pursuant to *Ahlborn* and the W.Va. Code § 9-5-11, West Virginia DHHR is limited to reimbursement from that portion of the settlement which is meant to compensate the medical recipient, here E.B., for past medical expenses.

Ohio does not contest the application of *Ahlborn* to the instant matter to apportion the settlement monies; however, Ohio argues that the "correct" information should be used to determine the value of E.B.'s claim for future medical expenses, i.e. the Medicaid paid rate, rather than the billed rate.

Notwithstanding this contention, Ohio has not cited any case law or statutory law wherein use of the Medicaid paid rate is required when calculating an injured party's future medical expenses.[8] Importantly, the Court in *Ahlborn* did not express any opinion regarding the measure of the injured's party's claim, i.e. the Medicaid paid rate, or the billed rate. Moreover, Ohio has not presented any expert testimony on this issue. Rather, the Ohio Attorney General's office attached to its supplemental brief an affidavit from Brooke Trisel, an employee of the Ohio Department of Job & Family Services, specifically, a Medicaid Health Systems Administrator. As part of the affidavit, Brooke Trisel included a photocopied page from Dr. Yarkony's life care plan with handwritten notes made on the same, which apparently are the notes from Brooke Trisel regarding the Medicaid paid rate for the services listed on Dr. Yarkony's life care plan. Given the fact that Brooke Trisel was never qualified as an expert, and given the fact that Ohio has presented no Ohio case law or statutory law which mandates the use of Medicaid paid rates to calculate the future medical costs of an injured party in this type of situation, the Court cannot conclude that, as a matter of law, the Medicaid paid rate should be used to calculate the projected value of E.B.'s future medical costs.

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[8]The Ohio Attorney General cited the case *Robinson v. Bates*, 112 Ohio St.3d 17 (2006) as authority for the proposition that the Medicaid paid rates should be used to calculate the future medical costs for E.B. However, the above-cited case relates the ways in which a plaintiff may prove the medical costs he or she has incurred because of the tortious activity of a third party, and the ways in which a defendant may defend against such claims. This case does not talk about the use of the Medicaid rate in the calculation of future medical costs in cases such as this one.

Finally, although Petitioner wants the Court to take the lowest projected value for E.B.'s future medical costs, and add to that the total value of the Medicaid liens, as well as $5,000,000.00 for pain and suffering based on the testimony of the Guardian Ad Litem, there is, unfortunately, no evidence that the Guardian Ad Litem is an expert in the valuation of pain and suffering claims in cases such as the one at bar. Therefore, the Court does not believe that it can add $5,000,000.00 to the value of E.B.'s claim simply based on the Guardian Ad Litem's testimony. Nevertheless, the Court finds that the Guardian Ad Litem's testimony is instructive in this regard. The Court is further satisfied that, pursuant to Ohio Revised Code §2315.18(B)(3), the Court is free to add its own value, without limitation, as the factfinder in this instance, for E.B.'s non-economic losses. In order to do so, the Court will consider the substance of Dr. Gary Yarkony's deposition testimony.[9]

B. Testimony of Gary M. Yarkony, M.D. re: E.B.'s daily life

Based on Dr. Yarkony's deposition testimony, which, of course, was given under oath, the Court hereby makes the following **Findings of Fact:**

1. E.B. has a static encephalopathy with significant cognitive and communicative dysfunction;

2. E.B. has loss of motor control in all four extremities and will never walk;

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[9]The Court will consider Dr. Yarkony's deposition testimony in addition to the evidence submitted during the hearing of December 21, 2009.

3. E.B. cannot voluntarily sit up;

4. E.B. cannot lift his head up on his own;

5. E.B.'s mom and dad have one older child, Hunter, and a younger child, Abigail;

6. E.B. is severely disabled and needs 24 hour per day care;

7. E.B. has severe mental retardation - he can not speak or communicate;

8. E.B. is unable to propel a wheelchair, move on his own or eat without assistance;

9. E.B.is incontinent and always will be;

10. E.B. had a seizure disorder (grand mal seizures) despite being on three medications to prevent them;

11. E.B. will never work and will never be gainfully employed;

12. E.B. has minimal brain function - turns toward the nurse that talks to him;

13. in order to care for E.B. during the course of his life, if he were to live to the **age of 50 years**, it would cost between **$19,118,608.00 and $19,191,768.00**;[10]

14. If E.B. were to live beyond 50 years of age, Dr. Yarkony opines that an **additional $411,976.28 to $413,186.28 should be added per year**. Therefore, if E.B. lives to the **age of 55 years**, it will cost between **$21,178,489.00 and $21,257,699.00** to care for E.B.;

15. If E.B. lives to the **age of 60 years**, it will cost between **$25,238,370.00 and $23,323.630.00** to care for him;

16. If E.B. lives to the **age of 65 years**, it will cost between **$25,298,252.00 and $25,389,562.00** to care for him;

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[10]This figure represents the cost for medical care and services only.

17. If E.B. lives to the **age of 70 years**, it will cost between **$27,358,133.00 and $27,455,493.00** to care for him.[11]

(Emphasis added.)

C. Full Value of E.B.'s Claim

Based on the foregoing, the Court is satisfied that it E.B.'s total medical expenses, assuming that he lives to be 50 years old, include $19,118,608.00. The Court is also satisfied that the full value of both West Virginia DHHR's lien and Ohio Job and Family Services's lien ($557,104.71 and $698,225.24, respectively) should be added to the above figure. The total of the above, three figures accounts for the total economic loss for E.B.[12]

With regard to E.B.'s non-economic losses, the Court acknowledges that the Guardian Ad Litem testified that E.B.'s non-economic loss would be between $5,000,000.00 and $10,000,000.00. As the Court noted above, the Guardian Ad Litem was not qualified as an expert in these matters; as a result, the Court can not accept the Guardian Ad Litem's representations as authoritative on the issues at bar. However, the Court is satisfied that the Guardian Ad Litem's testimony is instructive on this issue. In accordance with the same, the Court finds that $5,000,000.00 in compensatory damages is a reasonable figure in light of the

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[11]All of the foregoing numbers represent the cost for medical care and services only.

[12]Although a claim has been made for E.B.'s loss of future earning potential, no evidence has been provided to the Court regarding this claim. Consequently, the Court is unable to assign a value to the same.

damages E.B. has suffered. On the issue of E.B.'s injuries, the Court notes particularly Dr. Yarkony's testimony wherein he described E.B.'s activities of daily living. In reality, E.B.'s life was taken away from him before he had any chance to live it.

D. Summary

Accordingly, the full value of E.B.'s claim is $25,373,937.95.[13] The proposed settlement is $3,600,000.00. $3,600,000.00 / $25,373,937.95 = 0.1418778593647502 79 x 100 = approx. 14.1878%. Therefore, West Virginia DHHR is entitled to approx. $79,040.82[14]; and Ohio Dept. Of Job and Family Services is entitled to approx. $99,062.70.[15]

V.
CONCLUSION

For all of the foregoing reasons, the Court hereby **APPROVES** the infant settlement submitted in the above-noted matter. Further, the Court hereby **FINDS** that the full value of E.B.'s claim is $25,373,937.95. Based upon this finding, the Court **FINDS** that the proposed settlement is approximately 14.1878% of the full value of the minor's claim. Consequently, and based upon these numbers, the Court **FINDS** that West Virginia DHHR is entitled to approx.

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[13]$19,118,608.00 +$557,104.71 +$698,225.24 + $5,000,000.00 = $25,373,937.95

[14]Approx. $557,104.71 x 0.141877

[15]Approx. $698,225.24 x. 0.141877

$79,040.82; and Ohio Dept. Of Job and Family Services is entitled to approx. $99,062.70.

It is so **ORDERED**.

All exceptions and objections are hereby noted and preserved.

It is further **ORDERED** that the Circuit Clerk provide attested copies of this order upon entry to Michael G. Simon, Esq., FRANKOVITCH, ANETAKIS, COLANTONIO & SIMON, 337 Penco Road, Weirton, WV 26062; Max Freeman, Esq., MILLER, CURTIS & WEISBROD, LLP, 11551 Forest Central Drive, Suite 300, Dallas, TX 75243; Mary McQuain, Esq., ASSISTANT ATTORNEY GENERAL, Office of the Attorney General, Bureau for Medical Services, 350 Capitol Street, Room 251, Charleston, WV 25301; Robert J. Byrne, Esq., Office of the Attorney General of Ohio, 150 E. Gay Street, 21st Floor, Columbus, OH 43215; and, David J. Sims, Esq., SIMS LAW OFFICES, 1201 Main Street, Wheeling, WV 26003.

ENTERED this 9th day of July 2010.

JAMES P. MAZZONE, JUDGE